

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CHRIS WARD KLINE,

Plaintiff,

v.

HEALTH AND HUMAN SERVICES, et
al.,

Defendants.

Case No. 18-cv-04925-VC

**ORDER GRANTING MOTION TO
DISMISS**

Re: Dkt. No. 9, 22

The motion to dismiss is granted. Kline's previous suit against the United States and the Department of Health and Human Services was dismissed for failure to exhaust. *See Kline v. United States*, Case No. 3:17-cv-07118-VC, Dkt. No. 42. Kline has now exhausted his claims under 28 U.S.C. § 2675(a), but his claims against HHS must be dismissed, because the United States is the only proper defendant in a tort action brought against a federal agency. *See* 28 U.S.C. § 2679(a); *Kennedy v. United States Postal Serv.*, 145 F.3d 1077, 1077 (9th Cir. 1998). With respect to Kline's claims against the United States, some are barred by sovereign immunity, and the remainder fail to articulate a plausible claim for relief. *See* 28 U.S.C. § 2680(h); Fed. R. Civ. P. 12(b)(6). Because any amendment would be futile, the Complaint is dismissed without leave to amend. *See Carrico v. City & Cty. Of San Francisco*, 656 F.3d 1002, 1008 (9th Cir. 2011). The Clerk of the Court is directed to close the case.

IT IS SO ORDERED.

Dated: December 11, 2018



VINCE CHHABRIA
United States District Judge